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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DANIEL ALAS,

Petitioner,

C 07-3811 SI

ANSWER TO THE ORDER TO SHOW CAUSE

WILLIAM SULLIVAN, et al.,

Respondents.

Respondent William Sullivan, Warden of California Correctional Institution at Tehachapi, provides this Answer to the Order to Show Cause.

CUSTODY

Petitioner Daniel Alas is lawfully confined in the custody of the California Department of Corrections and Rehabilitation pursuant to a judgment imposed by the San Francisco County Superior Court on June 15, 2004. A jury convicted petitioner of second degree murder (Cal. Penal Code § 187) and found that he personally used a deadly weapon in committing the murder (Cal. Penal Code § 12022(b)(1)). CT 227, 230; RT 539-40. Additionally, the trial court found that

1 petitioner had a prior strike conviction (Cal. Penal Code § 667(b)-(i)) and a prior serious felony
 2 conviction (Cal. Penal Code § 667(a)). CT 230; RT 538, 565-66. On August 9, 2004, petitioner
 3 timely appealed his conviction. CT 345.

4 STATE PROCEDURAL HISTORY

5 On January 30, 2006, the California Court of Appeal, First Appellate District, affirmed
 6 the judgment. *See* Exh. D. On March 9, 2006, petitioner, represented by counsel, sought review in
 7 the California Supreme Court. *See* Exh. E. On April 26, 2006, the California Supreme Court denied
 8 review. *See* Exh. F.

9 FEDERAL PROCEDURAL HISTORY

10 On July 25, 2007, petitioner, represented by counsel, filed a petition for writ of habeas
 11 corpus in this Court. On July 31, 2007, this Court issued the Order to Show Cause.

12 CLAIMS FOR RELIEF

13 Respondent denies each of petitioner's claims, denies that any of petitioner's claims state
 14 a basis for federal habeas corpus relief, and affirmatively alleges that petitioner's conviction did not
 15 result from a violation of any federal constitutional right. Respondent incorporates by reference the
 16 Points and Authorities filed in support of the Answer. Respondent specifically responds to each
 17 claim as follows:

18 **A. Claim That Petitioner Was Denied Right To Present A Defense When Court
 19 Precluded Defense From Reading Prior Testimony Of A Non-Testifying Expert**

20 Petitioner has failed to show the state's disposition was "contrary to, or involved an
 21 unreasonable application of" clearly established United States Supreme Court precedent or "was
 22 based on an unreasonable determination of the facts in light of the evidence presented in the State
 23 court proceeding." See 28 U.S.C. § 2254(d)(1), (2).

24 **B. Claim That Trial Counsel Rendered Ineffective Assistance In Failing To Secure
 25 Alternative Expert**

26 Petitioner has failed to show the state's disposition was "contrary to, or involved an
 27 unreasonable application of" clearly established United States Supreme Court precedent or "was
 28 based on an unreasonable determination of the facts in light of the evidence presented in the State

1 court proceeding.” See 28 U.S.C. § 2254(d)(1), (2).

2 **C. Claim That Comment By Trial Court Violated His Right To A Fair Trial**

3 Petitioner is procedurally barred from presenting this claim, which the state appellate court
 4 found he forfeited by failing to object in the trial court. Accordingly, he may not seek federal habeas
 5 relief on this basis. Additionally, the claim is without merit. Petitioner has failed to show the state’s
 6 disposition was “contrary to, or involved an unreasonable application of” clearly established United
 7 States Supreme Court precedent or “was based on an unreasonable determination of the facts in light
 8 of the evidence presented in the State court proceeding.” See 28 U.S.C. § 2254(d)(1), (2).

9 **D. Claim That Trial Court Erred In Responding To Jury’s Question During
 10 Deliberation**

11 Petitioner is procedurally barred from presenting this claim with respect to CALJIC Nos.
 12 8.50, 8.72, and 8.75, which the state appellate court found he forfeited by failing to object in the trial
 13 court. Accordingly, he may not seek federal habeas relief on this basis. Additionally, the claim
 14 concerning CALJIC No. 8.40 is without merit. Petitioner has failed to show the state’s disposition
 15 was “contrary to, or involved an unreasonable application of” clearly established United States
 16 Supreme Court precedent or “was based on an unreasonable determination of the facts in light of
 17 the evidence presented in the State court proceeding.” See 28 U.S.C. § 2254(d)(1), (2).

18 **AVAILABLE TRANSCRIPTS AND RECORDS**

19 Respondent has lodged with the Clerk of the Court copies of the relevant record:

20 Exhibit A (Clerk’s Transcript); Exhibit B (Reporter’s Transcript of Trial); Exhibit C
 21 (Petitioner’s Opening Appellate Brief); Exhibit D (California Court of Appeal Opinion filed January
 22 30, 2006); Exhibit E (Petition for Review); Exhibit F (California Supreme Court Order filed April
 23 26, 2006, denying review).

24 **EXPRESS AND IMPLIED FACTUAL FINDINGS**

25 Respondent alleges that all express and implied factual findings by the state courts are
 26 entitled to a presumption of correctness. 28 U.S.C. § 2254(e)(1). Respondent denies that any claim
 27 made by petitioner requires an evidentiary hearing by this Court. 28 U.S.C. § 2254(e)(2).

GENERAL DENIAL

Respondent denies each and every factual or procedural allegation in the petition affording a basis for relief that has not been expressly admitted in the Answer. Respondent incorporates by reference any statements of fact material to the issues herein which are contained in the accompanying memorandum of points and authorities or in the exhibits filed with this Court, to the extent not inconsistent with respondent's factual allegations.

CONCLUSION

9 Accordingly, respondent respectfully requests that the Court deny the petition for writ of
10 habeas corpus.

Dated: January 14, 2008

Respectfully submitted,

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